

CRNM PRIVATE SECTOR TRADE BRIEF

The CRNM Private Sector Trade Brief is supported by a project funded by the Inter-American Development Bank Multilateral Investment Fund (MIF) to "Strengthen the Private Sector's Role in the Caribbean Community's External Negotiations." It is a monthly publication which forms part of the CRNM private sector outreach activities to update the CARICOM private sector and solicit their feedback on developments in the external trade negotiations.

TOWARDS A BUSINESS-FRIENDLY CARICOM INFORMATION AND COMMUNICATIONS TECHNOLOGY (ICT) POLICY FRAMEWORK

Volume 19, March- April 2007

IN THIS ISSUE: We peek into a recent CRNM-commissioned study which examines CARICOM's ICT sector, post telecoms "liberalization". The study shows slow exploitation of business opportunities for several reasons, chief of which seems to be lethargy in offering new licenses for competitors to traditional monopolies. The study details the many negative consequences of this slothfulness, and proposes a two-point plan for improving ICT competitiveness. Thanks to everyone who participated in the study for their views and suggestions.

THE 'POST-TELECOMS LIBERALIZATION' CARICOM TELECOMS/ICT SECTOR

A "Report on Telecoms/ICT in the Caribbean", based on a CRNM-commissioned study, has found that in spite of full liberalization of the telecommunications sector in the 15-nation Caribbean Community (CARICOM), local access to networks continues to be provided under virtually monopoly conditions. These conditions apply in member states where full liberalization has occurred as well in those where it is yet to occur. In the latter case, Antigua & Barbuda, The Bahamas, Haiti, Montserrat, Guyana, and Suriname.

One of the reasons for this state of affairs is that, with a few exceptions (e.g. Jamaica), CARICOM governments have been slow in encouraging and licensing alternate local access networks, whether wireline or wireless. In Barbados, for example, four applications to provide domestic telecommunications services, including fixed wireless (FWA) and data, were received on December 8, 2003 in response to a Request for Proposal. However, two years later, the Government had not issued the promised 15-year (renewable) licenses which also have a 75% foreign ownership limit and cost US\$ 10,000 each.

Local wireline access networks continue to be dominated in most countries by one company, namely, the incumbent with its copper local loop and national microwave and fibre optic networks. However, an encouraging exception can be found in The Bahamas where Cable Bahamas, a subsidiary of Columbus Communications, has built a fibre optic/coaxial cable television network providing access to 97% of the country's nearly 100,000 households, of which about 71,000 or 72% subscribe.

Access to international circuit capacity remains a serious problem in all CARICOM member states. Even though two new submarine fibre optic cables have recently been installed, nine of CARICOM's 15 member states and its four associate members remain connected to the outside world with either a single cable system or several systems controlled by the same operator. Haiti has no cable landing on its shores and is connected with the rest of the world only via satellite with its inherent capacity limitations and high prices. Additionally, there are some terrestrial links via the Dominican Republic.

The solution for local access and international circuit capacity bottlenecks lies in reinforcing the competitive and free entry environment for anyone willing to invest in wireline and wireless telecommunications infrastructure. It also lies in harmonizing spectrum use throughout the Caribbean and making available as much spectrum as possible for license free use and/or adopting a policy which says that the cost of spectrum use should be no higher than what it costs to administer it. Additionally, there must be facilitation and simplification of procedures for the acquisition by investors of licenses required to build terrestrial or marine-based telecommunications infrastructure, as well as the harmonization of licensing conditions throughout the CARICOM grouping.

COMPETITIVENESS CONSTRAINTS

The study found that the lack of effective competition and limitations on access to both local and international networks result in the high prices which individual and business users of telecommunications networks and services have to pay. These high prices apply to everything from international calls, Internet access, international and domestic leased lines, interconnection, telephone ports to toll free numbers. Needless to say, CARICOM producers of goods and services who depend on these services pass on these high communications costs to their customers.

Whereas subscribers in North America can make international calls to Western Europe and Asia for only a few cents a minute, paying US\$ 0.25/min. in the Caribbean for a call to the USA continues to be normal. Telecommunications Services of Trinidad & Tobago (TSTT) offers a Business 6 connection (1,544 Kbps down/ 256 Kbps up) for US\$ 663.35/ month, more than 20 times what a small community-based ISP in Minnesota, USA charges for essentially the same service provided over its alternated WiFi based mesh network. TSTT's price is also about 60 times more than what Cable Bahamas charges for its entry level minimal use 1 Mbps down / 256 Kbps up service.

Prices for leased circuit capacity on submarine cable systems are also much higher in CARICOM than in the countries and regions with which CARICOM businesses have to compete. To give one example, the lease of an E1 (2.048 Mbps) circuit, a standard benchmark used to compare leased circuit prices between a point in the Caribbean and Miami, costs a CARICOM user in the order of US\$ 10,000 a month. The lease of a same capacity circuit between New York and London is today available for about US\$800 a month and usually comes with more flexible conditions of use.

The situation, however, is changing. In Jamaica where Fibralink (an alternative submarine fibre optic cable linking to the ARCOS cable system in the Dominican Republic) began offering service at the end of the first quarter of 2006, the price for Internet Transit (transport and connection to the Internet usually in Florida or New York) dropped from nearly US\$ 7,500/month to less than US\$ 1,000/month for a T1 (=1,544 Mbps) capacity connection. Needless to say, it was a welcome development for Jamaican Internet Service Providers and ICT producing enterprises that need such international capacity¹. Another new privately-owned undersea fibre optic cable, Antilles Crossing, was recently completed between Barbados, St. Lucia and St. Croix.

REGULATORY, ADMINISTRATIVE AND OTHER BARRIERS TO INVESTMENT

The study found that despite liberalization, many regulatory, administrative and procedural constraints to developing a strong ICT and telecommunications sector still stand in the way and make it harder for new and especially smaller local investors to enter the market and compete on an equal footing. These constraints relate to inadequacies in licensing, interconnection and facilities-sharing arrangements which are key to a properly functioning, fair, and competitive telecommunications environment. Other constraints result from the absence of well-defined and publicly known timetables and conditions for the transition from a monopoly to a fully liberalized market including information about the number of licenses to be awarded, the conditions under which they will be awarded, and a timeframe for decisions to be rendered. All of these add to the unpredictability and instability of regulatory and legal frameworks in CARICOM member states.

¹ The price of Internet Transit services is usually cheaper for a given capacity of circuit because the Internet service is usually shared with other users as opposed to a dedicated circuit.

The study gave examples of the impact of such constraints. The liberalization process was particularly drawn out and subject to much uncertainty in Trinidad and Tobago where the process to open the telecommunications market began in 1997 but did not really become effective until April 2006 when the first competing cellular mobile operator, Digicel, started providing commercial service. In Suriname, the process of opening the market has been surrounded by much uncertainty and a high degree of informality. In Barbados, the failure to properly define all the necessary conditions and obligations related to licenses contributed to unexpected delays for one investor. The company in question had obtained a license to construct and land a new submarine cable. However, it had to wait six months to get another license to operate the cable because landing and operating required separate unrelated licenses.

Inconsistencies between different laws governing the telecommunications sector in a country can create confusion and sometimes gridlock as happened in Guyana. Key legislation there has its origins in different jurisprudence; namely, British for the 1990 Telecommunications Act and GT&T's and American for the 1999 Public Utilities Commission Act and GT&T 1990 Purchase Agreement. In other countries, there are overlapping and sometimes conflicting mandates among the different organs (sector-specific regulator, the fair trading commission and one or several government departments) responsible for regulating the sector. Operators and service providers in Jamaica, Barbados and the ECTEL member countries have complained that their applications or regulatory decisions have been unnecessarily delayed because of the lack of coordination among these various state organs.

CARICOM'S FRAGMENTED ICT POLICY-SETTING ENVIRONMENT

In recent years, CARICOM has accelerated efforts to create enabling environments at the regional and national levels for the growth and diffusion of ICTs as well as the development of knowledge-based economies. Over the years, the Conference of Heads of Government, the ultimate decision-making authority for telecommunications and ICT policy, has authorized the creation of several institutions at the regional level - each with a mandate for some aspect of ICT and telecommunications development. The study found that these mandates sometimes intersect and create a rather complex structure which has led to fragmentation and sometimes competitive approaches to policymaking for the sector.

Also, the mandates given to these institutions and their various committees and sub-committees are often at variance with those of the CARICOM Secretariat itself. There is a widely held view that while the Secretariat has been empowered to take specific action in various areas on behalf of the Community as a whole, its efforts have not been as effective as they need to be in order to properly support the path toward regional integration. The situation is further complicated by the mandates of other institutions which touch on policymaking for the sector.

The study noted that this fragmented approach to policy-making at the regional level has not made it any easier for policy makers who are trying to promote development of the ICT sector at the national level but are confronted with fragmentation at the national level where telecommunications and ICT are the responsibility of several ministries, commissions and other government authorities – ranging from Ministries of Communications, Trade, Development, and Foreign Affairs to Telecommunications Regulatory Authorities (TRAs), Anti-Monopoly Commissions and Consumer Affairs bodies.

NEED FOR HARMONIZED POLICIES AND REGULATIONS

Harmonization of laws and regulations would enhance regulatory certainty for all agents in the sector, reduce market distortions, help promote economies for equipment and services and thereby contribute to reducing prices for consumers of telecommunications services and ICTs. Harmonization would also reduce costs of market entry by simplifying licensing requirements, reduce the cost of compliance, help create economies in policy development and formulation, ensure better and more efficient implementation of best practices for the sector, reduce the cost of regulation and facilitate training and development.

It would also promote creation of a seamless Caribbean ICT and telecommunications space and facilitate the development of truly Caribbean-wide telecommunications and ICT service providers who

would benefit from economies of scale through serving a population base of 15 million, instead of the several small segmented markets which obtain at present.

Where there is evidence of a rapidly booming Contact centre industry, and massive investments being made in fibre-optic cable by mobile telecommunications operators and fibre optic cable operators, there is little doubt that their business decisions would be very much simplified, their transaction costs significantly reduced, and the chances of their projects being successful greatly enhanced, if laws, regulations, procedures, and conditions were harmonized in the region. Such operators would also benefit if there were effective coordination among authorities in the different countries and territories to grant them the necessary concessions, licenses and permits for their Caribbean-wide systems.

Harmonizing and simplifying licensing conditions for value-added, closed user group, and other non-basic services so that only registration, notification, or nothing at all is required in CARICOM member states would attract more local entrepreneurs and capital. Harmonization of frequencies for unlicensed use such as WiFi, WiMAX and other broadband wireless access (BWA) standards would promote the development of these new technologies whereas harmonized regional policies on type approval would lead to reduced costs of terminal equipment. Common measures to determine dominance and a common set of requirements imposed on dominant carriers, such as the need to produce standard Reference Interconnection Offers for dominant operators, would be of benefit not only to these operators but also new entrants. Additionally, investors would save in administration costs if application forms for licenses, authorizations and permissions were common across the region.

Against this backdrop, a two-pronged Action Plan is proposed to provide solutions. Firstly, the study recommends the establishment of a more rational regional structure for policy setting and harmonizing laws, regulations and administrative rules for ICTs and telecommunications. This would consist of (1) a permanent CARICOM institutional and political structure for the sector and (2) a permanent framework for regional collaboration among telecommunications regulators. Secondly, it is proposed that this same structure be used to harmonize telecommunications and ICT policies, laws, regulations and administrative rules in CARICOM, to empower private sector leadership and academia to help shape policies on integration and trade, and design a market access legal platform for electronic commerce and cross border trade through specifically:

- 1) Facilitating CARICOM member states to harmonize policies, laws, regulations and rules for ICT and telecommunications so as to:
 - reduce market distortions, help promote economies of scale for equipment and services and contribute to a lowering of prices for consumers of telecommunications services and ICTs;
 - achieve more efficient costs of market entry, reduce costs of compliance, create economies of scale and ensure more efficient implementation of best practices;
 - lower costs of regulation and facilitate training and development.
- 2) Empowering the private sector leadership to shape and influence policy on regional integration and trade as it relates to ICTs and telecommunications.
- 2) Establishing a market access platform for local commerce and cross-border trade and specifically with respect to:
 - E-Commerce: Ensure that measures are in place so that products and services traded electronically receive no less favourable legal treatment than goods and services traded in the traditional way;
 - Intellectual Property Rights (IPR): Ensure that there are IPRs for trademarks, patents, copyrights, and encrypted programmes carrying satellite signals. Introduce “digital commons” that facilitate small companies and countries utilizing information to introduce new products and services;

- Cross-Border Trade in Services: Prepare and adopt policies that promote market access to electronic services across a wide regime, based on reciprocal rights including joint ventures. Exchanges of business visitors should be prepared and adopted;
- Banking, Securities and Related Financial Services: Prepare and adopt policies and regulations that recognize the need for financial sovereignty and currency control while respecting most-favoured-nation (MFN) treatment for financial services, joint ventures, use of mutual funds, and access to insurance sectors including marine, aviation, transport and reinsurance.

As usual, we welcome your comments. Email them to us at privatesector@crnm.org. The full ICT report can be downloaded from the CRNM Web site – <http://www.crnm.org>. We invite and look forward to your participation in an upcoming sector consultation, to be announced, which will discuss the full report in detail.